BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	**Case No. R-1951**
JOLLY M. CYRIAC **11782 Palo Verde Avenue** **Cerritos, California 90703**	**OAH No. L2005050338**
Respiratory Care Practitioner License No. 23089	
Respondent.	

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on November 15 and 16, 2005, in Los Angeles, California. Complainant was represented by Gloria L. Castro, Deputy Attorney General. Jolly M. Cyriac (Respondent) was present and was represented by Steven Bassoff, Attorney at Law.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on November 16, 2005.

FACTUAL FINDINGS

1. On October 7, 2004, Complainant Stephanie Nunez filed the Accusation while acting in her official capacity as Executive Officer of the Respiratory Care Board of California (Board), Department of Consumer Affairs.

2. On August 1, 2003, the Board issued Respiratory Care Practitioner License Number 23089 to Respondent. The license is in full force and effect and will expire on March 31, 2006, unless renewed.

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Respondent's Treatment of Patient P.Q.

3. In August of 2003, Respondent was employed as a respiratory care practitioner at St. Mary Medical Center in Long Beach (hospital), where she had been working in that capacity for two months.[1]

4a. On August 20, 2003, Respondent was co-assigned, with respiratory care practitioner Leticia Pena (Pena), to work the 6:30 a.m. to 7:00 p.m. shift in the sub-acute unit on the fourth floor of the hospital. Respondent was responsible for providing respiratory care and treatment to P.Q.,[2] a ventilator-dependent patient.

4b. P.Q.'s ventilator was set on synchronized intermittent mandatory ventilation (SIMV) mode, which allowed the ventilator to synchronize between the breaths the patient was taking on her own (12 per minute) and the breaths the machine was providing (14 per minute).

5a. At 7:25 a.m., Respondent did a ventilator check and gave P.Q. her breathing medication of Albuterol 2.5 mg. and Atravent .5 mg. Per doctor's orders, the breathing medication was to be given "QID," meaning four times per day.[3]

5b. Respondent documented the 7:25 a.m. ventilator check and breathing treatment on P.Q.'s ventilator flow sheet.

6a. At 11:05 a.m., Respondent conducted another ventilator check. She also gave P.Q. her breathing medication of Albuterol and Atravent.

6b. Respondent documented the 11:05 ventilator check on P.Q.'s ventilator flow sheet. However, she did not accurately document the 11:05 breathing treatment: rather than writing the time "11:05" for the breathing treatment, she erroneously wrote "7:25" again.

7. Respondent did not give P.Q. any breathing treatments after 11:05 a.m.

8. P.Q.'s August 20, 2003 ventilator flow sheet contained no documentation of anything that occurred after 11:05 a.m.

9. At 1:07 p.m., Respondent transported P.Q. from the sub-acute unit on the fourth floor to the dialysis unit on the second floor of the hospital.[4] Upon transfer,

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[1] Although Respondent received her license on August 1, 2003, she had been working as a respiratory care practitioner at the hospital under a temporary permit from June of 2003.

[2] The patient's initials are used in lieu of her full name in order to protect her privacy.

[3] This is not the same order as "Q4," which means every four hours.

Respondent disconnected the ventilator and another hospital staff person took the ventilator to the dialysis unit. A nurse and another transporter took P.Q.'s bed, and Respondent "Ambu-bagged"[5] the patient during the transport.

10. Once they were at the dialysis unit, Respondent plugged in the ventilator, disconnected the patient from the Ambu-bag and connected her to the ventilator. Respondent then pushed the "Start/enter button" on the ventilator. At that point, the ventilator displayed its settings/parameters.

11a. The type of ventilator being used by P.Q. was an Achieva ventilator. When an Achieva ventilator has been turned off, it stays in Standby mode, even after the "Start/enter" button has been pressed, at which time the settings/parameters are displayed. In order to actually start ventilating the patient, the "Ventilate" button must be pressed.

11b. Respondent never pressed the "Ventilate" button, so she did not "turn on" the ventilator.

12a. When Respondent saw the settings displayed and saw the rise and fall of P.Q.'s chest, she moved away from the ventilator. She believed that the ventilator was on and that the patient was doing well. She remained near P.Q. for about five minutes, talking to one of the dialysis nurses.

12b. Although Respondent did not recognize it, the rise and fall of P.Q.'s chest that Respondent observed was P.Q. breathing partially on her own as a SIMV patient. At that point, the ventilator remained on "Standby" mode and was not ventilating the patient.

13. Respondent did not chart in P.Q.'s medical record her transport to the dialysis unit.

14. Respondent did not conduct a ventilator check to ensure the ventilator was functioning properly after the transport.

15. Respondent did not document on the ventilator flow sheet that she verified the ventilator settings and alarm settings after transport.

16. Respondent did not assess the condition of P.Q. after transporting her to the dialysis unit and placing her on the ventilator.

17. Respondent did not document P.Q.'s condition after her transport to the dialysis unit and placement on the ventilator.

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[4] At 1:07:36 p.m., the ventilator mode changed from SIMV to "Standby," when Respondent disconnected P.Q. from the ventilator for her transfer to the dialysis unit.

[5] This is an ambulatory/manual method of providing artificial breathing to a patient.

18. After speaking with the dialysis nurse for about five minutes, Respondent gave the nurse her pager number, so the nurse could page her to pick up P.Q. when her dialysis treatment was completed.[6] Respondent then returned to her assignment on the fourth floor.

19. Respondent planned to give P.Q. her next breathing treatment upon P.Q.'s return to the sub-acute unit in about three hours.

20. At approximately 4:00 p.m., Respondent received a call on her pager, requesting that she come to the dialysis unit. Since Respondent was busy caring for another patient, she asked Pena to assist her by picking up P.Q. from the dialysis unit. Pena agreed.

21. When Pena arrived in the dialysis unit, a nurse was "bagging" P.Q. and the patient had no pulse. At that point, the ventilator was in "Standby" mode and was not ventilating the patient. At 4:16 p.m., Pena turned on the ventilator and it began ventilating the patient.

22. Patient P.Q.'s ventilator had not provided her any ventilation from 1:07 p.m. until 4:16 p.m.

23. After her ventilator was turned back on, P.Q.'s condition deteriorated, and she died later that day.

24. Pena reported the situation to her supervisor. Respondent was later terminated from her employment with the hospital. As required by law, the hospital's Clinical Director of Respiratory Care reported the termination to the Board.

Respondent's Training at the Hospital

25a. In 2003, the hospital had a written policy and procedure entitled "Ventilator Support: Transporting Ventilator Dependent Patients." According to this policy, upon "in-house" transport of a ventilator-dependent patient, "Ventilator settings and all alarm settings will be verified and documented on the ventilator flowsheet each time that unit is moved from one area to another requiring a power down and power up."

25b. During her employment at the hospital, Respondent never received any written policies or any hospital training regarding how to transport patients.

25c. Prior to August 20, 2003, Respondent had transported by herself six other patients to the CT Scan and Xray departments of the hospital. Respondent does not recall

[6] At the hospital, when a ventilator-dependent patient was transferred to a new unit, the respiratory care practitioner would leave his/her pager number with the patient's new unit so that the staff could contact the respiratory care practitioner for care or patient pickup.

how, despite her lack of training, she knew how to transport the six patients by herself. None of these transports involved an Achieva ventilator.

26. Although Respondent had received training at the hospital regarding how to do a ventilator check on an Achieva ventilator, she had never been shown how to start, disconnect or restart the Achieva ventilator. On August 20, 2003, she believed that the Achieva was identical to other ventilators.

Standard of Care

27. Complainant's expert, licensed respiratory care practitioner Michael Werner (Werner), provided uncontroverted testimony on the standard of care for respiratory care practitioners. His testimony established the following findings (Factual Findings 28 through 31).

28a. The standard of care for a respiratory care practitioner after transporting a ventilator-dependent patient on an Achieva ventilator is to:

(1) Turn on the ventilator by plugging in the ventilator; connecting the oxygen supply tubing to the wall; pushing the "Start/enter" button; and pushing the "Ventilate" button;

(2) Attach the ventilator to the patient;

(3) Conduct a ventilator check to make sure that all alarms and parameters are correct and that the ventilator is functioning properly; and

(4) Conduct a patient assessment (e.g. making sure chest is rising and color is not blue) to ensure the patient is breathing properly, without any obstructions, and that he/she is in same condition as he/she was prior to transfer.

28b. Respondent made a critical error when she pressed the "Start/enter" button only and not the "Ventilate" button. Given Respondent's lack of training on the Achieva ventilator, this was an understandable error. However, a competent respiratory care practitioner who remains with a patient for five minutes would have been able to determine whether the ventilator was functioning properly by listening to the ventilation occurring, seeing the patient's chest rise appropriately and correlating the patient's condition with the ventilator.

28c. Respondent's failure to ensure that the ventilator was working properly after transferring the patient was an extreme departure from the standard of care and was not what would be expected from a competent respiratory care practitioner.

28d. Respondent's failure to properly assess patient P.Q.'s condition after transport was below the standard of care and constituted incompetence.

29a. The standard of care for respiratory care practitioners requires them to document in the medical record when they transport a patient to another part of the hospital.

29b. Respondent's failure to document P.Q.'s transport fell below the standard of care and constituted incompetence.

30a. The standard of care for respiratory care practitioners requires them to document in the medical record any time they conduct a check of ventilator settings.

30b. Respondent's failure to document the ventilator settings she noted after P.Q.'s transport fell below the standard of care and constituted incompetence.

31a. The standard of care for respiratory care practitioners requires them to document in the medical record the respiratory care practitioner's assessment of a patient's condition after transport to another part of the hospital.

31b. Respondent's failure to document P.Q.'s condition after transport fell below the standard of care and constituted incompetence

32. Werner opined that Respondent failed to give P.Q. her breathing medications per physician's orders. However, this opinion was based on the factual assumption that Respondent last gave P.Q. her breathing treatment at 7:25 a.m., which was refuted (see Factual Finding 6.) According to Werner, "the medication could have been given during the second ventilator check at 11:05 a.m." Since the medication was administered at 11:05 a.m., Respondent's administration of medication to P.Q. did not fall below the standard of care.

33a. Werner opined that the responsibility for the incident with P.Q. was not Respondent's alone. According to Werner, the hospital's failure to train Respondent on the Achieva ventilator contributed to the error. In an April 18, 2004 letter to the Board, the contents of which he continued to support during his testimony, Werner wrote:

> Completion of a respiratory training program, and successfully passing the certification exam does not mean that an individual is ready or should be allowed to work in all areas of a large medical center or with every piece of equipment as soon as they are hired. . . .
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> After reviewing the materials received from [the hospital], it appears to me that the department orientation, and competency assessment of [Respondent] was grossly inadequate and may have been a large factor in the incident that occurred. . . . [T]here was no indication that she was requested to review or actually did review the department policy and procedures manual so that she would be aware of the department polices. . . . [The failure to assess her competency on the Achieva ventilator was] an important matter in this case, because the Achieva ventilator has

> specific features that may have confused her if she hadn't been properly oriented to its operating functions. When that type of ventilator has been turned off, and then turned back on, it stays in Standby mode but the parameters are displayed so that a therapist can see if they are set correctly according to the physician's orders. In order to actually start ventilating the patient the "Ventilate" switch has to be pressed. I believe that [Respondent] may have thought that the ventilator was back on because she saw the parameters displayed, but then never pressed the "Ventilate" switch that would have started the ventilator. I don't think she was lying in her Declaration Statement where she says she "verified that the ventilator settings were accurate and according to the ventilator flowsheet" she had brought with her. She just didn't understand what she was looking at, and therefore made a critical error . . . [and] the respiratory department supervisors may have to share some of the blame for what occurred.

33b. Although Respondent received little hospital training, she had undergone a respiratory care practitioner training program and had taken and passed a national certification exam in order to obtain licensure. Werner's concerns about Respondent's lack of hospital training, while pertinent to the level of discipline imposed, did not absolve Respondent from performing within the expected standard of care as a licensee.

Alleged Bases for Discipline

34. In the Accusation, Complainant alleged several bases for discipline, some which were established and some which were not. The specific allegations are addressed individually as follows:

(a) Complainant established, by clear and convincing evidence, that Respondent committed acts of negligence regarding patient P.Q. in that:

(1) "Respondent failed to turn on the ventilator" and "failed to ensure that the mechanical ventilator was functioning properly" after transporting the patient from the sub-acute unit to the dialysis unit.[7]

(2) "Respondent failed to assess the condition of the patient after transporting her to the dialysis unit."

(3) "Respondent failed to document the transport of the patient."

[7] The Accusation alleged this act of negligence as two separate acts of negligence: (1) failure to turn on the ventilator, and (2) failure to ensure that the ventilator was functioning after transfer. However, Werner addressed these two acts as being only one act of negligence.

(4) "Respondent failed to document on the ventilator flowsheet that she verified the ventilator settings and alarm settings after transferring the patient from one unit to another."

(5) "Respondent failed to document the condition of the patient after transporting her to the dialysis unit."

(b) Complainant did not establish, by clear and convincing evidence, the allegations in the Accusation, paragraph 11, subdivision E, subparagraphs (7) and (8), that Respondent committed acts of negligence regarding patient P.Q. by failing to provide the patient with proper care and treatment by not administering the breathing medications Albuterol and Atrovent every four hours as ordered by the physician.[8]

(c) Complainant established, by clear and convincing evidence, that Respondent committed acts of incompetence in her practice as a respiratory care practitioner in that:

(1) "Respondent failed to turn on the ventilator" and "failed to ensure that the mechanical ventilator was functioning properly" after transporting the patient from the sub-acute unit to the dialysis unit.[9]

(2) "Respondent failed to assess the condition of the patient after transporting her to the dialysis unit."

(3) "Respondent failed to document the transport of the patient."

(4) "Respondent failed to document on the ventilator flowsheet that she verified the ventilator settings and alarm settings after transferring the patient from one unit to another."

(5) "Respondent failed to document the condition of the patient after transporting her to the dialysis unit."

(d) Complainant did not establish, by clear and convincing evidence, the allegations in the Accusation, paragraphs 11, subdivision E, subparagraphs (7) and (8), and 12, that Respondent was incompetent in her practice as a respiratory care practitioner by

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[8] The Accusation alleged this act of negligence as two separate acts of negligence: (1) failure to administer the breathing medications Albuterol and Atrovent every four hours as ordered by the physician, and (2) failure to provide the patient with proper care and treatment. However, Werner addressed these two acts as being only one act of negligence.

[9] The Accusation alleged this act of incompetence as two separate acts: (1) failure to turn on the ventilator, and (2) failure to ensure that the ventilator was functioning after transfer. However, Werner addressed these two acts as being only one act of incompetence.

failing to provide P.Q. with proper care and treatment by not administering the breathing medications Albuterol and Atrovent every four hours as ordered by the physician.[10]

(e) Complainant established, by clear and convincing evidence, that Respondent engaged in unprofessional conduct in her practice as a respiratory care practitioner, in that:

(1) "Respondent failed to turn on the ventilator" and "failed to ensure that the mechanical ventilator was functioning properly" after transporting the patient from the sub-acute unit to the dialysis unit.

(2) "Respondent failed to assess the condition of the patient after transporting her to the dialysis unit."

(3) "Respondent failed to document the transport of the patient."

(4) "Respondent failed to document on the ventilator flowsheet that she verified the ventilator settings and alarm settings after transferring the patient from one unit to another."

(5) "Respondent failed to document the condition of the patient after transporting her to the dialysis unit."

(f) Complainant did not establish, by clear and convincing evidence, the allegations in the Accusation, paragraphs 11, subdivision E, subparagraphs (7) and (8), and 13, that Respondent engaged in unprofessional conduct in her practice as a respiratory care practitioner by failing to provide P.Q. with proper care and treatment by not administering the breathing medications Albuterol and Atrovent every four hours as ordered by the physician.

Costs of Investigation and Prosecution

35. Complainant submitted as evidence of the costs of prosecution of this matter the declaration of the prosecuting Deputy Attorney General, documenting the time billed by the Department of Justice, Office of the Attorney General (DOJ) for this case as follows:

(a) For the fiscal year 2004/2005: Supervising Deputy Attorney General Adrian Panton - .25 hours @ $139 (subtotal $34.75); Deputy Attorney General Gloria L. Castro – 72.50 hours @ $146 (subtotal $10,585.00); and Senior Legal Analyst Elain Gyurko – 31.25 hours @ $91 (subtotal $2,843.75).

[10] The Accusation alleged this act of negligence as two separate acts of negligence: (1) failure to administer the breathing medications Albuterol and Atrovent every four hours as ordered by the physician, and (2) failure to provide the patient with proper care and treatment. However, Werner addressed these two acts as being only one act of negligence.

(b) Total DOJ costs incurred were $13,463.50.

(c) These costs included payment for the following tasks: (1) conducting an initial case evaluation; (2) obtaining, reading and reviewing the investigative material and requesting further investigation, as needed; (3) drafting pleadings, subpoenas, correspondence, memoranda, and other case-related documents; (4) researching relevant points of law and fact; (5) locating and interviewing witnesses and potential witnesses; (6) consulting and/or meeting with colleague deputies, supervisory staff, experts, client staff, and investigators; (7) communicating and corresponding with Steven Bassoff, Respondent attorney; (8) providing and requesting discovery; (9) preparing for and attending a mandatory settlement conference, as required; and (10) preparing for hearing.

36. There was no evidence that any of the costs were unreasonable.

37. The evidence established that Complainant incurred total costs of **$13,463.50** in the prosecution of this matter, all of which are reasonable.

Respondent's Assertions

38. Respondent currently lives in Wisconsin, but comes back to California once a month. She works one week per month, on a *per diem* basis, at Centinela Medical Center in Inglewood.

39. Respondent acknowledges her errors and characterizes them as resulting from her lack of knowledge: Her error in turning on the Achieva ventilator resulted from her lack of familiarity with that type of ventilator. Her failure to chart P.Q.'s transport and the ventilator settings after transport occurred because she "did not know that she had to chart it."

40. Respondent now makes sure she documents everything, including transport of patients, in the medical record.

LEGAL CONCLUSIONS

1. Cause exists for the suspension or revocation of Respondent's respiratory care practitioner's license for negligence in her practice as a respiratory care practitioner, pursuant to Business and Professions Code section 3750, subdivision (f), as set forth in Factual Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31 and 34.

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2. Cause exists for the suspension or revocation of Respondent's respiratory care practitioner's license for incompetence in her practice as a respiratory care practitioner, pursuant to Business and Professions Code section 3750, subdivision (o), as set forth in Factual Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31 and 34.

3. Cause exists for the suspension or revocation of Respondent's respiratory care practitioner's license for unprofessional conduct, pursuant to Business and Professions Code section 3755, as set forth in Factual Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31 and 34.

4. Pursuant to Business and Professions Code sections 3753.5 and 3753.7, Complainant is entitled to recover reasonable costs of investigation and prosecution of this matter in the amount of **$13,463.50,** as set forth in Factual Findings 35, 36 and 37.

5. While Respondent has committed several violations, her acknowledgement of her mistakes and her modification of her documentation practices to conform with the appropriate standard indicate that Respondent is willing to appropriately provide the services for which she was licensed. Given the facts of this case, outright revocation would be overly harsh and punitive and is therefore unjustified. A properly conditioned probationary period is more appropriate and should serve to adequately protect the public health, safety, welfare and interest. However, Respondent should be separated from her practice for a period of time to allow her to formulate a plan for ensuring her future compliance with the standards governing the practice of respiratory care.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respiratory Care Practitioner License Number 23089, issued to Jolly M. Cyriac is hereby revoked. However, the revocation is stayed for a period of seven years, and Respondent is placed on probation under the following terms and conditions:

1. SUSPENSION

As part of probation, Respondent shall be suspended from the practice of respiratory care for a period of 90 days, beginning the effective date of this decision. If Respondent is not employed as a respiratory care practitioner, or if she is currently on any other type of leave from employment, the suspension shall be served once employment has been established or reestablished and prior to the end of the probationary period. Respondent shall ensure that each employer informs the Board, in writing, that it is aware of the dates of suspension.

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2. OBEY ALL LAWS

Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of respiratory care in California.

Respondent shall notify the Board in writing within 14 days of any incident resulting in her arrest, or charges filed against, or a citation issued against, Respondent.

3. QUARTERLY REPORTS

Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

For the period covering January 1 through March 31, reports are to be completed and submitted between April 1 and April 7.

For the period covering April 1 through June 30, reports are to be completed and submitted between July 1 and July 7.

For the period covering July 1 through September 30, reports are to be completed and submitted between October 1 and October 7.

For the period covering October 1 through December 31, reports are to be completed and submitted between January 1 and January 7.

Failure to submit complete and timely reports shall constitute a violation of probation.

4. PROBATION MONITORING PROGRAM

Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent is encouraged to contact the Board's Probation Program at any time she has a question or concern regarding her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

5. PROBATION MONITORING COSTS

All costs incurred for probation monitoring during the entire probation shall be paid by Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, she shall be required, instead, to submit an explanation of why she is unable to submit the costs, and the date(s) she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why Respondent is unable to make such payment(s) must accompany this submission.

Failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the respiratory care practitioner license will not be renewed, until such time all probation monitoring costs have been paid.

The filing of bankruptcy by the Respondent shall not relieve Respondent of her responsibility to reimburse the Board for costs incurred.

6. EMPLOYMENT REQUIREMENT

Respondent shall be employed a minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of her probation period.

Respondent may substitute successful completion of a minimum of 30 additional continuing education hours, beyond that which is required for license renewal, for each eight months of employment required. Respondent shall submit proof to the Board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

7. NOTICE TO EMPLOYER

Respondent shall be required to inform her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Accusation in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

The employer will then inform the Board, in writing, that he/she is aware of the discipline, on forms to be provided to Respondent. Respondent is responsible for contacting the Board to obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the Board.

Respondent shall execute a release authorizing the Board or any of its representatives to review and obtain copies of all employment records and to discuss and inquire about Respondent's probationary status with any of Respondent's supervisors or directors.

8. CHANGES OF EMPLOYMENT OR RESIDENCE

Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, or change in supervisors, administrators or directors.

Respondent shall also notify her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes, however the Respondent must also provide her physical residence address as well.

9. COST RECOVERY

Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be **$13,463.50** and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, she shall be required, instead, to submit an explanation of why she is unable to submit these costs in part or in their entirety, and the date(s) she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why Respondent is unable to make such payment(s) must accompany this submission.

Failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

The filing of bankruptcy by the Respondent shall not relieve the Respondent of her responsibility to reimburse the Board for these costs.

10. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE

Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement or the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon her return to California and prior to the commencement of any employment where service as a respiratory care practitioner is provided.

11. VALID LICENSE STATUS

Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to her license expiration date shall constitute a violation of probation.

12. SUPERVISOR QUARTERLY REPORTS

Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:

For the period covering January 1 through March 31, reports are to be completed and submitted between April 1 and April 7.

For the period covering April 1 through June 30, reports are to be completed and submitted between July 1 and July 7.

For the period covering July 1 through September 30, reports are to be completed and submitted between October 1 and October 7.

For the period covering October 1 through December 31, reports are to be completed and submitted between January 1 and January 7.

Respondent is ultimately responsible for ensuring her employer(s) submits complete and timely reports. Failure to ensure each employer submits complete and timely reports shall constitute a violation of probation.

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13. RESTRICTION OF PRACTICE

Respondent may not be employed or function as a member of a respiratory care management or supervisory staff during the entire length of probation. This includes lead functions.

Respondent is prohibited from working in home care unless it is under direct supervision and personal observation.

Respondent is prohibited from working for a registry.

14. DIRECT SUPERVISION

During the period of probation, Respondent shall be under the direct supervision of a person holding a current and valid non-restricted Board license. "Under the direct supervision" means assigned to a respiratory care practitioner who is on duty and immediately available in the assigned patient area. The Board shall be informed in writing of and approve the level of supervision provided to the Respondent while she is functioning as a licensed respiratory care practitioner. The appropriate level of supervision must be approved by the Board prior to commencement of work

15. COMPETENCY EXAMINATION

Within six months of the effective date of this decision or as designated by the Board, Respondent shall be required to take and pass a written competency examination as designated by the Board. This examination shall be taken on a date specified by the Board and Respondent shall pay all examination fees.

Respondent's failure to appear for or pass any scheduled examination will be noted as failure to pass or failure to successfully complete the examination. Respondent's failure to successfully complete the examination after one scheduled examination, shall constitute incompetence and a violation of probation for the purposes of disciplinary proceedings and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Failure to pay costs for the examination will constitute a violation of probation.

16. VIOLATION OF PROBATION

If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

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17. COMPLETION OF PROBATION

Upon successful completion of probation, Respondent's license shall be fully restored.

DATED: December 16, 2005

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JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings